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No. 80-

IN THE

Supreme Court of The United States

OCTOBER TERM, 1980

Petition For A Writ of Certiorari to The United States Court of Appeals For the Fifth Circuit

WALTER BLANTON, JR. and his wife, ANITA BLANTON,

Petitioners

vs.

GENERAL ELECTRIC CREDIT CORPORATION OF GEORGIA,

PALACE INDUSTRIES, INC.,

MRS. ELLEN BEASLEY,

Respondents

John R. Woodward, III
Attorney for Petitioners
410 N. Palm Street
Jesup, Georgia 31545
1-912-427-4642

QUESTION PRESENTED FOR REVIEW

IS FUNDAMENTAL FAIRNESS VIOLATED WHEN THE BANKRUPTCY COURT TRUSTEE AND JUDGE REJECT THE SELF-HELP INSTANT RIGHT OF GIVING TEN-DAY NOTICE OF RESCISSION AND TENDER-BACK OF PROPERTY, ALLEGING FRAUD, FOR IMMEDIATE RELIEF BY BANKRUPTS TO MORTGAGE CREDITORS OF DEBTORS UNDER SOSA v. FITE, 298 F. 2nd, 114-122, TO IPSO FACTO ABROGATE MORTGAGES WITHOUT THE NECESSITY FOR JUDICIAL ACQUIESCENCE OR RATIFICATION: AFTER THE BANKRUPTCY COURT FINDS UNDER RULE 306 (a): "NOTHING FOR THE TRUSTEE TO HANDLE FOR THE ESTATE", DENYING PROPERTY THAT WOULD GIVE A FRESH START TO BANKRUPTS, NO OBJECTIONS FILED-AND DISMISSAL, SUA SPONTE, AFTER THE STATUTE OF LIMITATIONS HAD RUN AND THE TRUSTEE NOT ACTING WITHIN TWO YEARS OF ADJUDICATION OF THE BANKRUPTS AS SUCH?

TABLE OF CONTENTS

Page

QUESTION PRESENTED..... i

INDEX OF AUTHORITIES.....iii,iv

PARTIES TO PROCEEDINGS..... 1

REFERENCE TO OFFICIAL AND UNOFFICIAL REPORTS..... 2

JURISDICTION. 3,4

CONSTITUTIONAL PROVISIONS,TREATIES, STATUTES AND ORDINANCES,AND REGULATIONS INVOLVED..... 5

STATEMENT OF THE CASE 5

REASONS FOR GRANTING WRIT 13

CERTIFICATE OF SERVICE..... 27

APPENDIX A 1a
Decision of March 25,1981,USCA, 5th Cir., Unit B,No.80-7475
Rehearing Denied,May 29,1981 6a,7a

APPENDIX B.....8a,9a
Bankruptcy Order of Res Judicata by Judge Herman W.Coolidge, entered as cases dismissed, on June 10,1980,Cases B-279-49-50

May 26,1980,Order in case 279-82.10a
June 15,1979,Order in case 279-49 and 279-50,Bankruptcy Court.12a
Trustee answer in CV 279-112.... 14a

INDEX OF AUTHORITIES

CASES page

Allen Const. Co., Inc. vs U.S..... 21
646 F.2nd 487

American Bank v. Bishop, 239 Ga. 809.21

Walter and Anita Blanton, Jr.
Bankruptcy cases B-279-49 and 50... 14a
(Blantons vs Skelton, Trustee
U.S.D.C., S/D/Ga/Case 279-112)
Order of District Court signed 12a
by Bankruptcy Judge June 15, 1979
District Court Order of may 26, 1980. 10a
Bankruptcy Court Order of June 10, 1980. 8a

Brown vs O'Keefe, 57 S.C. 543 18

Brown vs. City of Atlanta, 66 Ga. 71..13

In Re: Bryant, 626 F.2nd 492..... 9

Burden v. Yates, 644 F.2nd 503..... 25
(5th Cir. Unit B, May 8, 1981)

Citizens Utility Co. v. AT & T..... 23
595 F.2nd 1171, 1174

Central Trust Co. v. Chicago Audit... 17
orium Association, 240 U.S. 581

13 Collier on Bankruptcy, Sec. 601.07. 18
and § 608.06
Reg. Z, § 226.a(b)-T.I.L. Act 12

Hall vs Hooper, 234 Ga. 631.....13

In Re Garner, 556 F.2nd 772..... 9

CASES — Page

James vs Home Const.Co.,458 F.Supp.54.12, .21

Ford Motor Company vs Dennis Milhollin...3
63 L. Ed 2nd,page 22 .11

Mourning vs Family Publications.....3
Services, 411 U.S.,page 356

Schreiber vs. Sharpless 15
110 U.S. 76

Security Feed & Seed Co. vs Smith....10
213 Ga.,783

Sellers vs Wollman,510 F.2nd,119.....15

Sosa vs Fite, 498 F.2nd 114.....i
14
17

Chester A.Pearlman,Trustee vs
Reliance Insurance Company..... 14
371 U.S. 132

In Re Webb, 54 Federal 2nd,1065..... 14

In Weaver, 632 F.2nd 461 9

In Re Whitener,105 Federal,p.180.... 4

CONSTITUTIONAL(Authority)

United States Constitution,Fifth and.5
Fourteenth Amendments

STATUTES (Authority)

United States:28 U.S.C.,§1254(1)....4

No. 80-

IN THE SUPREME COURT OF THE

UNITED STATES

OCTOBER TERM, 1980

WALTER BLANTON, JR., and his wife,

ANITA BLANTON, PETITIONERS

VS.

GENERAL ELECTRIC CREDIT CORPORATION OF GEORGIA,

PALACE INDUSTRIES, INC.,

MRS. ELLEN BEASLEY,

RESPONDENTS

PETITION FOR A WRIT OF CERTIORARI

TO

THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

Petitioners petition to review the decision of the Fifth Circuit that affirms the District Court and the Bankruptcy court dismissals, sua SPONTE.

REFERENCE TO OFFICIAL AND UNOFFICIAL REPORTS

Walter Blanton, Jr., and his wife, Anita Blanton, adjudicated bankrupts on April 17,1979 in cases B-279-49 and 50 in Bankruptcy Court, S/D/Ga/ and filed their adversary proceedings May 15,1979 v. the respondents and gave the ten day notice and tender of property to respondents on May 23,1979 setting June 12,1979 as the date to hear the rescission on its merits before the Bankruptcy Court Judge who refused merit hearing, dismissed sua sponte in writing on June 15,1979.

Walter and Anita Blanton, Jr., enter case CV 279-82 in U/S/D/C, S/D/Ga. on June 29,1979 against same respondents to ratify the rescission on the merits by the district court and the district court dismissed the case, sua sponte, June 16, 1980, the Bankruptcy Court dismissing cases B-279-49 and 50 in the main case and adversary case, June 10,1980, sua sponte, after the trustee and courts denied jurisdiction under Bankruptcy Court Rule 306(a), and refused to name a trustee under F.R.C.P. 25, to continue case CV 279-82 in District Court.

Fifth Circuit Court of Appeals case No. 80-7475 was dismissed against the respondents March 25,1981, rehearing and denial of stay of mandate denied on May 29,1981, thence this petition. Copies of the above are appended in the appendices following the petition, all rulings upholding the Bankruptcy Court dismissal order of June 15,1979, are the object of this petition.

JURISDICTION

Petitioners invoke this court's jurisdiction to review the final judgment of the United States Court of Appeals, Fifth Circuit, decided March 25, 1981, affirming the District Court final order dated June 16, 1980, affirming the judgment of Bankruptcy Court decided June 15, 1979, and the Bankruptcy Court Judgment of June 10, 1980.

The motion for rehearing and en banc was denied by the Fifth Circuit Court of Appeals as entered May 29, 1981.

The basis for the Federal jurisdiction is under Ford Motor Company, et al Pet.v. Dennis Milhollin, et al, __US__, 63 L Ed 2d 22, 100 S Ct ___ for construction of the TILAct by the Federal Reserve Board; Mourning v. Family Publications Service, Inc., 411 U.S. 356, for constitutionality of the Truth In Lending Act.

JURISDICTION CONTINUED

As early as 1900 in the case of In Re WHITENER, 105 Federal, page 180, the Fifth Circuit recognized that "The jurisdiction of the district court (sitting as a court of bankruptcy), as thus granted, is unquestionable bankrupt jurisdiction, and not general jurisdiction to hear and determine controversies between adverse parties." The District Court for the Southern District of Georgia could invoke F.R.C.P. 25 and require a de jura trustee pursue case CV 279-82 without dismissal, sua sponte, as was done in Walter and Anita Blanton, Jr., vs Ralph Skelton, Trustee, in case CV 278-112 in U/S/D/C/, S/D/Ga/ to recover civil penalties v. respondents.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1245 (1), accordingly, by petitioners.

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES AND REGULATIONS

U.S. CONSTITUTION AMENDMENT V

U.S. CONSTITUTION AMENDMENT XIV

(DUE PROCESS OF LAW)

(LOSS OF PROPERTY RIGHT)

STATEMENT OF THE CASE

Briefly stated, petitioners bargained with aluminum-siding salesmen's company contractor and conduit, June 22,1976, to improve a house on a 60x100 Ft. Lot known as 225 N.Cypress Street Lane, in the City of Jesup, Wayne County, Georgia, their residence homeplace at the time and agreed the secondary home mortgage would cover only that property. The invalid Mother of Anita Blanton lived in house on adjacent lot, no.273, not pledged as security to the contracting company and lender, its conduit in a July 22,1976 contract.

On April 5, 1979,General Electric Credit Corporation of Georgia (GECC OF GA) commenced newspaper notice of foreclosure on both lots and houses, 225 and 273 N. Cypress Street Lane,having fraudulently altered and included the 273 property in the security deed of July 22,1976,at a time petitioners had sold off the 273 property to Bryant L.Westberry in Fee Simple,unbeknowings that the 273 property was being used as security to improve the 255 property with aluminum siding. Mr. Westberry had paid off a $3,400.mortgage on 273 property to obtain fee simple title to same from Ist Federal Savings, with no consideration to Blantons who could not provide for Anita's Mother a place to live any longer. Mr.Westberry paid the Third Mortgage and grew hot at the foreclosure notice on his land.

Blantons went under the protection of the Bankruptcy Act of 1898 and 1938 and were adjudicated bankrupts April 17,1979.

Mrs. Beasley had agreed with Blantons to keep the roof in repair for five years from August,1974 until August,1978, as an oral part of the sale and mortgage contract held by her and fraudulently decieved petitioners who moved from the 255 land in June,1979,when the ceiling caved in. On July 30,1979 District Court Judge Alaimo restrained and enjoined Mrs. Ellen Beasley and her Attorney, J. Ken Royal, from foreclosing her first mortgage,and became in contempt of U.S.D.Court on June 3,1980,when they recorded a foreclosure deed to Leon Monroe,who claimed $6,000. was paid for the 255 N.Cypress St.Lane house and lot before repairs to the roof.

Petitioners by amendment had scheduled

the 255 property as exempt property for their homestead residence for the then statutory amount of $1,600.which included the appurtenances of the TILAct claim and civil penalties and rescissions that were violated by the respondents at the May 17,1979 first meeting of creditors where the trustee rejected all claims of the petitioners,shown in his abandonment report of May 21,1979 that there was nothing to handle for benefit of creditors.

The adversary hearing on June 12,1979, to hear the rescission of the contracts on notice and tender of May 23,1979 was dismissed by the Bankruptcy Court that refused to require a trustee pursue the claims against the respondents and under the TILAct for failure to make disclosures and right of rescission and violation of the Georgia Secondary Home Mortgage Acts, and fraud against Mrs. Beasley.

Petitioners were in Bankruptcy Court to hear TILAct claims and Georgia violations without objection from respondents under In Re Bryant, 626 F. 2nd 492 (5th Cir.1980) In Re Garner, 556 F.2nd 772(5th Cir.,1977) as to jurisdiction,the Trustee,Mr.Skelton, refused and rejected the claims to pursue for the bankrupt estate or for fresh start and under the rule exempting these claims, admitted the right of the private attorney general,under the TILAct,to pursue the claim on June 12,1979,under In Re Weaver, 632 F.2nd 461 (1980) Note 11, in Bankruptcy court on June 12,1979 that holds:

" The Rule,in any event,is not intended to preclude the debtor from prosecuting or defending when the trustee does not do so,"
Note 13:..."the claim must be brought in the bankruptcy court by debtor"
Note 14:..."through private suits"
Note 15:..."for judicial economy".

However,the Bankruptcy Court dismissed the adversary case,June 12,1979, Sua Sponte,all parties ready to litigate.

The Trustee sought to defend Mrs. Ellen Beasley on June 12,1979,and the tape recording of that date was "malfunctioned" but, on September 18,1980,Judge Alaimo,of U/S/D/C/Case CV 279-82 ordered the original tapes of the May 17,1979 first meeting of creditors, the June 12,1979 tapes that were malfunctioned,and of the July 2, 1980 hearing tapes,forwarded to the Fifth Circuit Court of Appeals.Copies of the transcripts of these hearings were filed by the petitioners in the Fifth Circuit.

Since the TILACT Choses in action and vs Ellen Beasley were exempted with the property at 255 N.Cypress Street Lane,as appurtenances thereto they were unassign- and non-transferable to Trustee Skelton, under§§85-1803 of the Ga.Code Ann &1805; Security Feed and Seed Co.vs.N.E.Smith, 213 Ga. 783(1958),at anytime and exempt property is never administered therefore.

According to the Federal Reserve Board regulation letter (unnumbered)dated for May 14,1973,the representative of a debtor's estate will be entitled to bring a TILAct action must be determined by the applicable state rule under §125 (b),15 U.S.C.A. § 1635 (b).This is binding under Milhollin,__US__, 63 L Ed 2n 22, 100 S Ct __ which holds:

> Courts must decide cases by extrapolating from related statutes and administrative provisions, but where legislative silence betokens permission or considered abstention from regulation, courts are not accredited to supersede congress or the appropriate agency by embellishing upon the regulatory scheme."

Under Bankruptcy Rule 110:" A voluntary petition,schedule,or statement of affairs may be amended as a matter of course at any time before the case is closed.",allowing exemptions of all claims by petitioners to even include any tax refunds,TILAct Claims and fraud on petitioners claims until Bankruptcy Court cases B-279-49and B-279-50 are closed in the cases to allow pursuit in Bankruptcy Court.

Since two years have passed since the April 17,1979 adjudication of bankruptcy Trustee Skelton is barred under 11 U.S.C. § 108(a) from pursuit of any claims.

Since the three year statute of limitations from the June 22,1976 and July 22, 1976,TILACT claims arose v.the corporate defendants,respondents,has passed,under Reg. Z, § 226.9 (b),unless suspended due this appeal,the petitioners would be barred and their rights under the TILAct would be forfeited. The rights of the obligors,the Blantons,Petitioners,under these contracts would never pass to a trustee in Bankruptcy without a court order as he may pursue if the original obligor does not,however,Blantons did pursue in this case under authority of James vs.Home Constr. Co.,458 F.Supp.54 (S.D. Ala.,1978),and the Bankruptcy Court

erred in holding that only the Trustee may give the ten day notice of rescission and tender of the aluminum siding back to GECCof Ga. on May 23,1979, in dismissing the case Sua Sponte, June 15,1979, which is the main judgment appealed from herein.

REASONS FOR GRANTING THE WRIT

"The Supreme Court is not an expounder of theoretical law, but administers practical law, and corrects only errors as have practically wronged the complaining party." Brown vs. City of Atlanta, 66 Ga., p. 71.

> "Stability and certainty in law are desirable; stare decisis is a valid and compelling basis of argument. Cobb vs. State, 187 Ga. 448. It is not impossible, however, to achieve unanimity in every case which reaches this court. When a majority of this court determines that stability must give way to justice [to the prisoner], then justice prevails. The 'full bench rule' has been repealed." Hall vs. Hooper, 234 Ga. 631 (1975).

The decisions below significantly cut the Fifth and Fourteenth Amendments due to the Blantons,Petitioners, in construing the TILAct liberally in favor of the debtor and denied strict construction against the three creditor respondents, by a private attorneys general under Sosa vs Fite , 298 F. 2nd,114-122. The case of IN RE WEBB (CCA) 54 F 2nd 1065 reads:"Flexible and liberal orders are never beyond the jurisdiction of the court while the estate pends.Typical instances of these are allowances to attorneys, informal surrender of exempt or burdensome property, and other simular instances where,lacking adverse parties,adversary procedure does not apply."Bankruptcy and District court abused this rule.

Justice Black,for the Court,ruled in Chester A.Pearlman,Trustee,Petitioner v. Reliance Insurance Company, 371 U.S.132, 9 L.Ed. 2nd 190, 83 Sup. Ct. 232:

1. Property not owned by the bankrupt does not pass to the trustee.

"Property interests in a fund not owned by a bankrupt at the time of the adjudication,whether complete or partial, legal or equitable,mortgages,liens,or simple priority rights,are not part of

the bankrupt's property and do not vest in the trustee, the Bankruptcy Act not authorizing the trustee to distribute other peoples property among a bankrupts creditors."

The Fifth Circuit case of Sellers vs. Wollman, 510 F. 2nd, 119-122 (1975) is in point on fact and law with the Petitioners in holding the TILAct Penal under § 130 of the T.I.L.Act, U.S.C.A., § 1640 (a), Under the Consumer Protection Act, H.R. Report No. 1040, 90th Congress, 2nd Sess. holding penal statutes do not survive an adjudication of bankruptcy under Schreiber vs Sharpless , 110 U.S. 76, 28 L. Ed. page 65 (1884) in that the aluminum siding people refused to give disclosures of 1. the right to rescind within three days, 2. obtain a City of Jesup Home Improvement Permit to attach aluminum siding to the residence home of Blantons, 3. obtained no City of Jesup City License to do business, 4. failed to disclose cost of credit report, 5. failed to itemize each amount of finance charge, 5. failed to disclose unpaid balance of the cash price 6. the amount due on default 7. failed to disclose and describe the 255 Property properly 8. improperly added the 273 property as security, 9. failed to describe contractor's lien for installing siding.

The latter item required under the Fifth Circuit case of Starks vs Orleans Motors, Inc., 500 F. 2nd,1181 (1974). The failure to disclose the three year statute to rescind,notwithstanding the disclosures were never made within the three day period of June 22,1976 and July 22,1976 under the 1974 amendment under P.L. 93-495, Section 405,88 Stat. 1517,1519,codified at 15 USC Section 1635 (f).

Upon receipt of the notice and tender back the respondents refused to return to the Blantons obligors any money given as ernest money,down payment,or otherwise, within the ten day period of receipt of the notice of May 23,1979 given by the Blantons,therefore,the siding mortgage became immediately rescinded,property of the Blantons,the contracts voided by law on June 12,1979,of some $2,325.00 and the

aluminum siding became property of the petitioners, free and clear of the void and fraudulent liens by operation of law under Sosa vs Fite, C.A.Texas, 1974, 498 F. 2nd 114. The June 15,1979 order of Bankruptcy Court may be so held void by this court under a Georgia Statute:

"A void judgment is a nullity and may be so held in any court when material to the interest of the parties." Ga Code § 110-709.

As far back as 1916 the court held under Central Trust Co. vs Chicago Auditorium Association, 240 U.S., page 581: "Commencement of a case itself was held to terminate an agreement to which the bankrupt was a party, without reference to any nonbankruptcy law or provision in the Bankruptcy Act."

The June 12,1979 refusal to adjudicate the Blanton claims under the TILAct, and § 57(g) of the Bankruptcy Act, 11 U.S.C.A. § 93 (g) forbids the allowance of a claim of the respondents who have recieved a voidable preference unless surrendered and the preference adjudicated.

Finally and lastly the Bankruptcy and District Courts could informally grant any required abandonment authority to the petitioners under In Re WEBB, Supra, page 14 and under WHITENER, Supra, page 4, of this petition, but such authority was not a mandate of statutory law under In Re WEBB, Supra, page 14 of this petition inasmuch as the trustee rejected and abandoned the claims May 17, 1979, June 5, 1979, June 12, 1979, in writing and open court, at which any title claimed by the court revested in the bankrupts such that the trustee relinquishes possession and the Court of Bankruptcy loses any jurisdiction over the property, exemptions, choses in actions. See 13 Collier on Bankruptcy, ¶§ 601.07 and 608.06 at 6-20, 6-103 (14th ed.); Brown v. O'Keefe, 57 S.Ct. 543 (1937) Petitioners feel both lower courts have

abused judicial discretion and any order from them of June 15,1979, June 10,1980, and June 16,1980, upheld March 15,1981, rehearing denied May 29,1981 in the Fifth Circuit Court of Appeals is clearly erroneous under this petition and the citations contained therein, as TILAct laws must be liberally construed in favor of the debtor petitioners,the Blantons, under Rule 608 that reads in part: "The court may, on application or on its own iniative and after hearing on such notice as it may direct,approve the abandonment of any property....."so as to revert any title, nunc pro tunc, in effect, so that the bankrupt is treated as having owned the property continuously.In this case, the trustee rejected all property from April 17,1979,adjudication day, thus, no title ever vested in a trustee.

The case of Allen Construction Co.,Inc. vs. United States, 646 F. 2nd 487 reads on 11 U.S.C.A., Sec. 110 (b) that:

> "If bankruptcy trustee fails to assume or reject executory contract within 60-day period after adjudication of bankruptcy,he loses his right to perform contract that is beneficial to bankrupt's estate."

The contracts of June 22,1976 and July 22,1976,rescinded June 12,1979,as alleged herein,were rescinded under Federal Reserve Board regulations ruling of James vs. Home Const. Co., 458 F.Supp. 54 (S.D. Alabama,1978),under authority of First American Bank vs. Bishop, 239 Ga.,809, (239 S.E. 2d 19) (1977),as unauthorized security (tract 273) had been filled in on the July 22,1976 mortgage as shown in the affidavit of petitioners, who pledged the realty at 255 N.Cypress Street Lane,alone,as security.

Only residential property at 255 N. Cypress Street Lane,occupied by Blantons, was eligible for a home improvement secondary loan on June 22,1976,as a mortgage on the 273 Cypress Street Lane property would be void as being a third home improvement loan mortgage,prohibited by law.

The June 16,1980 dismissal,sua sponte, under F.R.C.P. 41 (b),by the District Court,was on a twenty-day-notice to the petitioners to obtain permission from the Bankruptcy Court Judge or the court would appoint a trustee to pursue case 279-82 in the District Court under cases 279-243 and 279-244, in District Court, or to suffer dismissal of the case 279-82. This is the shortest notice ever given from cases researched prior to dismissal, sua sponte,under FRCP 41 (b) and is an abuse of judicial discretion and is

"clearly erroneous" and must be on a motion filed by the respondents as held underCitizens Utility Co. vs. A T & T, 595 F. 2nd 1171, 1174 (9th Circuit),and that delay was 16 years. In that case no Federal Housekeeping interest was advanced by depriving appellant of his cause of action. Consequently administrative concerns should not have been figured in the district courts calculus when it exercised erroneous discretion. The dismissal,sua sponte,sought by the District Court June 16,1980,under FRCP 41 (b) was a dismissal on the merits, to prevent refiling on the merits even if dismissed without prejudice,the effect was the same inasmuch as the Statute of limitations ran out on July 22,1979,making refiling totally prohibitive for petitioners.

[The within Blanton case fully tracks Lakewood vs Exchange Bank,190 U.S.,p.294, (1903)from the same Federal Courts in South Georgia,Bankruptcy,District and the Fifth Circuit Court of Appeals to the United States Supreme Court that held:

> "The Court holds that title to property generally exempt under State Law does not pass to the trustee in Bankruptcy."

Both Lakewood and Blanton deal with the refusal of the lower courts to acknowledge homestead exemptions and the U.S. Supreme ordered records from all courts for review under the 14th Amendment to determine if the lower courts were trying to administer exempt property that cannot be done as in the Blanton case the Truth In Lending claims and 255 property has been exempt since May 17,1979. While the bankruptcy pends the "stay"pends, on Mrs.Beasley' contempt of July 30,1979 order.] See Mullane vs Coastal Bank,339 U.S.,306.

The case of Burden vs Yates, 644 F.2nd, page 503,(5th Circuit,Unit B)May 8,1981, uphold the petitioners ...."the court's dismissal of the suit was inappropriate, since the dismissal,though without prejudice, had the effect of precluding plaintiff from refiling his claim due to the running of limitations,since plaintiff's failure to comply with the order"was for other reasons,rather than purposeful delay or contumaciousness,and since the court never employed lesser sanctions before dismissing the case, such as having the case ready for jury trial within a certain period of time, or ordering Mrs. Beasley and Attorney J.Ken Royal,in contempt of court for wilful,deliberate,violation of the restraining order and injunction of District Court of July 30,1979,

where they were enjoined from the sale of the 255 N.Cypress Street Lane property, until further order of court, that was violated by the filing of an alleged foreclosure deed entered June 3,1980, in favor of Leon Monroe. The courts must be just before they can be generous. The present status, without reversal and remand to the Fifth Circuit with an appropriate order on the District and Bankrupt Courts adjudicating the rescission complete and ordering return of the petitioners to the status quo under the contracts rescinded will amount to the courts forbiding all efforts to put property beyond the reach of creditors, no matter what its value; so long as courts are tolerant of such conduct, men will engage in it and the purpose of the Bankruptcy Act will be balked.

In Re Feynman, 77 F. 2nd 320,322 (2nd Cir. 1935.

Respectfully submitted,
John R. Woodward, III
Attorney at Law for
Petitioners
410 N.Palm Street
Jesup,Georgia,31545
1-912-427-4642

July 15,1981

CERTIFICATE OF SERVICE

I hereby certify that three copies of the foregoing have been furnished to each of the following: Clerk, Fifth Circuit Court of Appeals, Unit B, 56 Forsyth Street,N.W., Atlanta, Georgia,30303; Quinton S. King, Attorney for Palace Industries,Inc., 5775-A Glenridge Drive, N.E.,Suite 125, Atlanta, Georgia, 30328; Mr. J.Kenneth Royal, P.O.Box 1374, Jesup,Georgia,31545, Attorney for Ellen Beasley; Mr. Robert L. Schwind,of Messrs. Levine and Meltz, Attorneys at Law for General Electric Credit Corporation of Georgia,Suite 707, 41 Marietta Street, N.W.,Atlanta, Georgia, 30303, by U.S. Mail with postage sufficient to insure deliveryon this the 15th day of July,1981.

John R.Woodward, III
Attorney for Petitioners
410 N.Palm Street
Jesup,Georgia,31545
1-912-427-4642

APPENDICES

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

UNIT B

NO. 80-7475

WALTER BLANTON, JR.,
and his wife, ANITA BLANTON,

Plaintiffs-Appellants

vs.

GENERAL ELECTRIC CREDIT
CORPORATION OF GEORGIA,
PALACE INDUSTRIES, INC.,
MRS. ELLEN BEASLEY,

Defendants-Appellees.

Appeal from the United States
District Court for the Southern
District of Georgia, Brunswick
Division- Case CV-279-82

Decided March 25, 1981

Before Hill, Fay and Anderson,

Circuit Judges.

Opinion of March 25,1981

After a careful review of the record, we adopt the district court's final order of June 16,1980 as our own. The district court's order is appended hereto.

AFFIRMED.

ORDER OF JUNE 16,1980

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION

WALTER BLANTON, JR. and ANITA BLANTON,

Plaintiffs

v.

ELLEN BEASLEY, PALACE INDUSTRIES, INC., GENERAL ELECTRIC CREDIT CORPORATION OF GEORGIA,

Defendants

CIVIL ACTION NO. CV 279-82

ORDER

Plaintiffs commenced this action on June 29,1979, seeking to recover damages against the defendants on several claims

arising out of the purchase, repair, and financing of a house. Federal jurisdiction was predicated upon alleged violations of the Truth in Lending Act.

Earlier, plaintiffs had sought to pursue their claims for violations of the Truth in Lending Act in Bankruptcy Court, where they were involved in involuntary proceedings, but the Bankruptcy Judge ruled that the right of action had succeeded to the Trustee with the filing of the petition and no longer belonged to the plaintiffs.

Subsequently, in this Court, defendant General Electric Credit Corporation of Georgia moved for summary judgment on plaintiffs' claim on the ground that plaintiff's entitlement to the claim had already been decided adversely to plainffs in Bankruptcy Court and therefore that decision was res judicata on plaintiffs'

claim in this court.

In ruling on defendant's motion, this court acknowledged that plaintiffs were barred from challenging the determination that the right of action had succeeded to the Trustee with the filing of the petition, but disagreed that plaintiffs were therefore necessarily barred from pursuing their claim in this forum, since the Trustee could subsequently abandon the claim to the plaintiffs. Accordingly, although the court denied defendant's motion, it stayed the action until plaintiffs showed that the right to bring the action had been abandoned by the Trustee.

However, instead of moving for a determination in Bankruptcy Court on whether the right of action had been abandoned by the Trustee with the approval of the court, the plaintiffs renewed their

attack on the Bankruptcy Court's initial determination that the right of action had succeeded to the Trustee with the filing of the petition. That determination is no longer subject to attack.

In conclusion, the Court finds that defendants should no longer be subjected to this seemingly endless litigation in view of plaintiffs' failure to show that they are the proper parties to bring this lawsuit. Therefore, in accordance with this court's order of May 26,1980, plaintiffs' claim for violations of the Truth in Lending Act is hereby dismissed without prejudice for want of prosecution. With the loss od plaintiffs' federal claim, the Court will decline to exercise jurisdiction over plaintiffs' pendent state claims.

In sum, the Complaint is dismissed

in its entirety.

The Clerk is instructed to enter an appropriate judgment dismissing plaintiffs' complaint without prejudice.

SO ORDERED, this 16th day of June, 1980.

s/Anthony A. Alaimo
CHIEF JUDGE, UNITED STATES
DISTRICT COURT, SOUTHERN
DISTRICT OF GEORGIA

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
UNIT B

NO. 80- 7475

ON PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC

Opinion March 25,1981, 5 Cir.,1981

____F.2nd_____

DENIED May 29,1981

Before Hill, Fay and Anderson,
Circuit Judges.

PER CURIAM:

(✓) The petition for rehearing is DENIED and no member of this panel nor Judge of this Administrative Unit in regular active service having requested that the Court be polled onrehearing en banc(Rule 35, Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 16; Fifth Circuit Judicial Council Resolution of January 14, 1981), the suggestion for Rehearing En Banc is Denied.

ENTERED FOR THE COURT: May 29,1981.

s/ James C. Hill
United States Circuit Judge

APPENDIX B

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA

In the matter of:

WALTER BLANTON, JR. — Bankruptcy Case No. B-279-49
ANITA BLANTON — No. B-279-50

Bankrupts
(Debtors)

ORDER

Whereas the "Motion and Petition" filed by the debtors in the above-captioned matter has been read and considered,and

Whereas said debtors have treated this pleading as a motion and not as an adversary proceedings in that the same is not captioned as required by Rule 710 of the Bankruptcy Rules;nor have said debtors paid the required filing fees for adversary mattebs, and

Whereas all issues set forth in the said motion have heretofore been ruled

on by this court by orders dated June 15, 1979 and August 9, 1979, and the time for filing notice of appeal has passed.

IT IS THEREFORE ORDERED that said issues are res judicata and said pleading is HEREBY DISMISSED.

s/HERMAN W. COOLIDGE

BANKRUPTCY JUDGE

Dated at Savannah, Georgia, this 10th day of June, 1980.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION

WALTER BLANTON, JR., ET AL,

Plaintiffs CV 279-82

v.

ELLEN BEASLEY, ET AL,

Defendants

ORDER

This action is presently stayed pending plaintiffs' showing that their claim for violations of the Truth in Lending Act has been abandoned by the Trustee-in-Bankruptcy with the approval of the Bankruptcy Court. The Court notes that plaintiffs have been dilatory in petitioning the Bankruptcy Court for an order showing that they own the cause of action, if indeed the cause of action has been abandoned in Bankruptcy Court. The indefinite continuation of the stay works hardship on all concerned.

Accordingly, unless plaintiffs have shown that they are entitled to pursue their claim for violations of the Truth in Lending Act in this Court within twenty days of the entry of this Order, this case shall be dismissed sua sponte for want of prosecution without prejudice to plaintiffs' right, or the right of the Trustee, to pursue this claim in Bankruptcy Court. See generally Fed. R.Civ. P. 41 (b); Wright & Miller, Federal Practice and Procedure § 2370 (1971).

SO ORDERED, This 26th day of May, 1980.

s/Anthony A. Alaimo
Chief Judge, United States
District Court, Southern
District of Georgia

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF GEORGIA

In the matter of

ANITA BLANTON,

Bankrupt

IN BANKRUPTCY

Number 279-50

ANITA BLANTON,

Plaintiff

vs.

PALACE INDUSTRIES, INC.
GENERAL ELECTRIC CREDIT
CORPORATION OF GEORGIA
DAVID B. MELTZ and
MRS ELLEN BEASLEY

(Note-same order in same court for Walter Blanton, Jr., Number 279-49)

ORDER

Bankrupt filed the above-captioned complaint seeking to rescind certain contracts as well as recover penalties and attorneys fees and also seeking further relief as this Court may deem proper.

The matter came on to be heard and the motion was made(by the court)that the Bankrupt was not the proper party to

bring this complaint,as all rights of the Bankrupt passed to the Trustee,Ralph T. Skelton, Jr.under Section 70a of the Bankruptcy Act upon his qualifying in that capacity on May 17,1979.

After consideration of said motion, (made by the court only),IT IS HEREBY ORDERED thatunder the provisions of Section 70a supra and the ruling set forth in the case of Murphy v.Household Finance Corporation, 560 F.2nd,P.___,all rights set forth in the Bankrupt's complaint have passed to the Trustee and therefore the bankrupt is not the proper party to bring this complaint.

ORDERED FURTHER that all motions of the Bankrupt relating to this matter are hereby denied and Bankrupt's complaint is dismissed. s/Herman W.Coolidge
Bankruptcy Judge
This 15th day of June,1979.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION

WALTER AND ANITA BLANTON, JR.,
Plaintiffs
vs. CV No.279-112

RALPH SKELTON, JR.,
Defendant
TRUSTEE

DEFENDANT'S ANSWER

FOURTH DEFENSE

In further answering the complaint of the plaintiffs, Defendant shows the Court that the Trustee did abandon all assets in both cases before the Bankruptcy Judge and submitted to the said Bankruptcy Court a No Asset Report, which was adopted by the Bankruptcy Judge on May 21,1979. Trustee further shows the Court that he has no objections to the Bankrupts pursuing their own claims, since he filed a No Asset Report. /s/Richard Scarlett, Atty.
for Ralph Skelton, Trustee

October_____,1979.